



Staff Report

Agenda Item: **RESOLUTION ACCEPTING SETTLEMENT FROM ARCH BOND** – Discussion and consideration of acceptance of a bond release for receipt of payment from Arch Bond Company for guarantee on the Mountain Gate Subdivision.

Staff Contact: Sherry Bailey, Community Development Director

Meeting Date: October 14, 2008

Background:

Since Empire Residential filed for bankruptcy reorganization staff has been working with the two bond companies to correct the problems covered by the bonds. Arch Bond Company hold the smaller of the two bond amounts and their bond covers only phase I of the project. Staff has supplied an itemized accounting of the corrections and a cost list to the town attorney who in turn has been dealing with Arch. Arch has purposed issuing a check to the town for the remaining bond amount and has asked an accounting back as the items are corrected so that they can attempt to get repayment at some date from either Empire or any new owners. Staff agrees with that stipulation and is recommending the settlement and the release by the council.

Recommendation:

Staff recommends that the council accept the settlement and approve the resolution release.

RESOLUTION # _____

A RESOLUTION OF THE MAYOR AND COUNCIL, TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA AUTHORIZING THE RECEIPT OF ARCH INSURANCE COMPANY PERFORMANCE BOND FUNDS ON THE MOUNTAIN GATE SUBDIVISION PROJECT AND AUTHORIZATION TO RELEASE AND EXONERATE ARCH INSURANCE COMPANY FROM FURTHER LIABILITY ON SAID PROJECT

WHEREAS, the Town of Clarkdale entered into a Development Agreement with Empire Residential Construction, L.P. for the development of a subdivision to be know as Mountain Gate, and

WHEREAS, Empire Residential Construction, L.P. acquired a Faithful Performance Subdivision Bond from ARCH INSURANCE COMPANY (ARCH), No. SU5013728, for the project in the amount of Three Million Eleven Thousand Four Hundred Forty and 83/100 Dollars (\$3,011,440.83), and

WHEREAS, the Town of Clarkdale filed a Notice of default of Empire Residential Construction, L.P. March 6, 2008, and

WHEREAS, Empire Residential Construction, L.P. filed for Chapter 11 Bankruptcy In the United States Bankruptcy Court, Central District of California, Riverside Division, Case No.: 6:08-14592 MJ, and

WHEREAS, ARCH has acknowledged its obligation under the aforesaid Performance Bond to either complete the project or pay to the Town of Clarkdale the remaining penal sum on the Performance Bond of One Hundred Fifty Thousand Five Hundred Seventy Two and 04/100 (\$ Dollars 150,572.04) for the incomplete work and/or defective work, said funds to be used by the Town toward the cost of completing of the bonded project improvements.

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and Town Council of the Town of Clarkdale accept the sum of One Hundred Fifty Thousand Five Hundred Seventy Two and 04/100 Dollars (\$150,572.04) as full payment of the amount due from ARCH under the Performance Bond No. SU5013728 issued for the project and further agree to execute a full release and exoneration of Performance Bond No. SU5013728 to ARCH INSURANCE COMPANY.

Passed and adopted by the Mayor and the Town Council of the Town of Clarkdale this 14th day of October, 2008.

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk

APPROVED AS TO FORM

Robert S. Pecharich, Town Attorney